

Minutes of the June 25, 2010 Regular Council Meeting

Call to Order and Flag Salute at 3:30 pm by Mayor Serio.

Council in Attendance: Weistling, Serio, Carmean, Bunting, Smallwood, Tingle and Langan

President's Report

- Mayor Serio announced that the Town will make a donation to the Bethany Beach Volunteer Fire Company as it has in the past.
- Mayor Serio announced that the Town has acquired the vacant canal-front lot located on W Cannon St adjacent to the Public Works facility. The Town began negotiating with the property owner approximately three (3) years ago but did not purchase at that time due to the cost. The Town applied for a DNREC grant designed to provide boating access to the Inland Bays via a canoe/kayak launch. The property may be used in other ways to further enhance residents' recreational opportunities. The primary use is as a canoe/kayak trailhead. All other activities will be discussed before the property is developed.
 - The newly acquired property is not suitable for the Public Safety Building; however, recreational facilities (basketball court) currently located outside of the park may be moved to the new lot so as to provide more building area.
 - The negotiation price for the acquisition was \$430,000 with \$215,000 coming from the Delaware Land and Water Conservation Grant.
- Mayor Serio announced that French and Ryan will be retained for Architectural and Engineering services to assist with various phases of the creation of a Public Safety Building. Sixteen (16) firms from Delaware, Pennsylvania and Maryland expressed an interest; these were reviewed by committee with six (6) semi-finalists chosen for interviews. All were evaluated on their experience in this type of project, building activities in this area, and in familiarity with the permitting process and with local construction companies. Two (2) finalists were chosen. Committee members visited sites where both of these firms have been involved. Mayor Serio introduced Mr. French.
 - Mr. French explained that there are four (4) phases of this project: Preliminary Design; Construction Documents; Actual Bidding; and Construction Administration. Phase 1 (Preliminary Design) will include a study of all viable options and designs to include a cost estimate for each.
 - Mayor Serio added that residents might visit the South Bethany Town Hall for an idea of what the new building might resemble. The first decision will be should this be a free-standing building or attached to the current fire house. Mayor Serio called for questions from the audience.
 - Pete Frederick (1605 Bunting Ave) – asked if the Town is considering modifying existing buildings. Mayor Serio – the Town will study the feasibility of all options.
 - Mary Pat Kyle (1205 Bunting Ave) – urged the Town to consider an elevated building that would provide parking on the lower level.
- Mayor Serio announced the findings of the Board of Elections (attached). There being only one nominee for one (1) position and no other nominees for two (2) positions, the Board of Elections has declared R. Gardner Bunting re-elected for another term. Diane Tingle and William Weistling Jr will remain for a two-year term until they submit a letter of resignation at which time the remaining term of the position will be filled by appointment by the Council.

Topics for Discussion and Possible Action

a. Request to accept the Public Safety Building Committee recommendation for Architectural and Engineering Services – Mayor Serio

Motion to accept – Council Member Carmean

Second – Council Member Langan

DISCUSSION

Mayor Serio noted that the Public Safety Committee has met in special session to determine the final candidate.

Vote: All in favor (7-0)

Motion passed.

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b. Resolution #46-2010 Resolution Adopting an All Hazard Mitigation Plan for The Town of Fenwick Island – Mayor Serio

Mayor Serio read Resolution #46-1010 into the record (copy attached).

Motion to accept Resolution #46-2010 – Council Member Carmean

Second: Council Member Smallwood

DISCUSSION

Council Member Langan asked if the Town's Emergency Management Committee approved the document referenced in the resolution; Mayor Serio advised that it was not necessary for the committee to approve it. Town Manager Abbott advised that he attended a meeting regarding the document update and recently reviewed the document. He found nothing objectionable in it. Council Member Bunting added that he wanted Council to review the document before voting. Building Official Schuchman advised that the Town must approve the All-Hazard Mitigation Plan every five (5) years for CRS purposes; this is the same document that was approved by council previously. This is a way for the Town to get its favorable CRS rating that affects flood insurance rates. Mayor Serio questioned if the Town signed on as a member of a group that would review the plan and accept it on the Town's behalf; Mrs. Schuchman replied that is correct. Council Member Weistling added that contact information required update and Council Member Carmean expressed concern about approving the Resolution without having it corrected.

Vote: 6 –yes; 0 – no; 1- abstain (Council Member Bunting)

Resolution #46-2010 passed.

c. Request to Authorize up to \$5000 for a Tree Planting Grant – Council Member Carmean

Council Member Carmean, on behalf of the Environmental Committee, requested permission to proceed with filing for a State of Delaware Forestry Grant to compliment the Council's efforts in developing the new Cannon Street property into a trailhead and naturalistic park. Mrs. Carmean read her proposal into the record (copy attached).

DISCUSSION

Mayor Serio liked the idea but questioned the timing indicating that she believes this is putting the cart before the horse. Development of the new property is in its infancy in deciding uses for the area and must first be made ready for canoes and kayaks. Council Member Carmean noted that the planned planting activity is around the perimeter of the property. Mayor Serio advised that, while the Town may not build a structure on the property, the property may be put to use to house construction equipment once work on the Public Safety Building begins. Council Member Carmean noted that actual planting did not have to be done until Spring 2011. Awards are announced in August 2010 and she believes the Town's plans should be fairly firm by that time. The Environmental Committee also recommended looking into developing a long-range plan for the area. Council Member Tingle advised that she would like the entire Council to meet to discuss the property; Mayor Serio believes that it is too early in the development of the property for a full council meeting devoted to the park. Council Member Weistling expressed concern that the lot is not totally vacant. It does already have trees and other vegetation and he does not see a place for new trees. He believes that the park should be 100% complete before landscaping it.

PUBLIC COMMENT

- Pete Frederick (1605 Bunting Ave) –Asked that since the planting must be on town property could they not be placed at street ends. Council Member Carmean noted that planting at canal ends create problems (e.g. obstructing views). She added that the Parks and Recreation Advisory Group is exploring recreational opportunities throughout the town and is enthusiastic about developing the lot. Mr. Frederick asked if the Town could screen the garbage cans at the dunes. Mayor Serio noted that DNREC regulations are a concern when the street ends and dunes are involved in projects. Council Member Tingle added that she believes the tree planting project should be delayed.
- Mike Quinn (5 W Houston St) – believes the proposal to place a tree line is a “good neighbor” policy that would cut down on construction noise. Council Member Weistling noted that there is a line of trees on the west side of the lot and suggested that Council members should visit the site. Council Member Smallwood added that he believes the town should apply for the grant noting that funds may not be available in the future. Council Member Bunting believes that addressing the side toward the neighbor is commendable. Mayor Serio asked if these will be trees or shrubs; Council Member Carmean affirmed that the plan includes trees only.

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Motion to give the Environmental Committee permission to proceed with the grant application and report back to Council in August on the outcome – Council Member Carmean

Second – Council Member Smallwood

Vote: Yes – 2 (Council Members Carmean and Smallwood); No – 5 (Council Members Langan, Tingle, Weistling, Serio and Bunting)

Motion defeated (2-5)

d. Request to authorize up to \$500 to support the Cultural and Historic Preservation Sub-committee August 2010 activity – Council Member Smallwood

Motion to support the Cultural and Historic Preservation Sub-committee activity by authorizing the expenditure of up to \$500 – Council Member Smallwood

Second - Council Member Langan

DISCUSSION

Council Member Smallwood explained that the sub-committee requires the funds in order to add seven (7) more posters to the current display. These will show recently acquired photos; estimated cost is \$70 each. Mayor Serio asked if these will be sent out vs. by Town Hall staff; Council Member Smallwood advised that they will be done by a vendor. Council Member Carmean asked if this expense will be added to the end of this budget year or the next and should this activity be placed into the budget. Mayor Serio added that last year the Council decided not to include a line item for this activity to the budget. Council Member Bunting noted that the funds are available in Community Outreach; Council Member Carmean questioned the advisability of allocating funds at this late date. Council Member Tingle advised that a large number of photos have been acquired that are not on display and that the focus of the guided walking tour this year is on local businesses. She added that last year's exhibit and walking tour resulted in at least 2,000 visitors to the combined activities. Mayor Serio believes that the Town has a wealth of history to share and that the allocation of \$500 to the effort is not out of line.

Vote: All in favor (7-0)

Motion to authorize funds passed.

e. Fenwick Island Police Department Extra Duty Policy – Council Member Smallwood

Council Member Smallwood requested further discussion of the FIPD Extra Duty Policy as a result of activities surrounding the "wedding house." He expressed concern that the Town's police force is being used to provide private security service. Council Member Smallwood advised that Town Manager Abbott had been directed to secure opinions from both the Town's Attorney and the Town's insurance carrier. Legal council advised that the advertizing of this property as a reception facility is a non-conforming use and not allowable. Council Member Smallwood averred that he does not have a problem with officers working other jobs or to the current policy of providing police coverage for house moving or possible future activities as they might relate to established commercial enterprises with commercial business licenses in town. His objection is to providing security services to the "reception hall" as it is a non-conforming use. Council Member Smallwood added that the "business" is still being advertized on the internet as a reception hall and that contracts still exist for receptions in September and October of this year.

DISCUSSION

Mayor Serio advised that she is conducting discussions with outside parties about the use of this particular property and that there is a problem with advertizing it as a commercial reception hall. Mayor Serio added that holding a private affair is allowed but that advertizing for use as a specific type of commercial entity while situated within a residential area is not allowed. In the current situation, a rental license for the property exists and that three (3) infractions will cause the owner to lose his license to rent the facility. Mayor Serio noted that the Town is still waiting for the results of its request for an opinion from the Town's Attorney regarding the Fall 2010 weddings. Council Member Carmean expressed disappointment that this problem has not been resolved and would like the Town Attorney to more clearly define existing law.

Council Member Smallwood asked for clarification on where the Town stands on the issue of Extra Duty Police coverage for the Fall 2010 events. Mayor Serio advised that the Extra Duty policy requires revision to exclude certain activities, as it currently excludes duty locations in bars or taverns. The Town's Policy Manual needs to be addressed as the staff works to the manual. Council Member Smallwood asked about paying FICA and other taxes to the extra duty officers at the recent "reception." Town Manager Abbott advised that the employee was paid directly by the

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owner of the property and that no Town funds were involved. Council Member Carmean added that she found that disturbing and that this should also be defined in the policy. Council Member Bunting added that if the FIPD police car is being used that the Town should be compensated for its use. Council Member Weistling believes that the policy should be reviewed and ban Extra Duty from all “party” activities. Mayor Serio will appoint a group of citizens to work with Chief Boyden to review current Extra Duty policy.

PUBLIC COMMENT

- Mike Quinn (5 W Houston St) – asked what opinion the Town received from its insurance carrier. Mayor Serio advised that the insurance carrier expressed concern about liability issues but that the Town’s insurance policy will cover Extra Duty Police Coverage so long as the duty is not in bars/taverns. A claim could be made against the Town but that the insurance policy should cover any claim.
- Peter Frederick (1605 Bunting Ave) – noted that if an officer contracts to work on his/her own, that is not addressed under the insurance policy. The policy will cover only if the Town provides the police officer for Extra Duty. Council Member Smallwood added that the policy covers only under the normal scope of duties. Council Member Carmean noted that she thought that two (2) citations had already been issued but learned recently that only one was issued. Council Member Weistling added that citizens must lodge a complaint but that the police must observe an illegal activity in order to issue citations.
- Vicki Rymer (8 E Georgetown St) – suggested that the Town check its auto insurance carrier regarding use of the police vehicle for Extra Duty.
- Mayor Serio will seek to address three (3) issues: the manner in which the officers are being paid; the effect of this extra duty on the Town’s insurance; a way to compel the property owner to cease advertizing as a reception facility. Peter Frederick suggested that a letter be sent to the property owner today to cancel the Fall events. Mayor Serio will follow up with the rental agent about rectifying the situation.

f. Beach Committee request to hold Laser Light Show with DJ at July 3 Bonfire – Becka McWilliams

Becka McWilliams requested Council make an exception to Town Ordinance to allow a laser light show at the Town Bonfire. It will last approximately 45 minutes and include colored lasers shot toward the ocean. Council Member Smallwood added that the lights will be in time with music.

Motion to allow the Beach Committee to have a Laser Light Show at the Bonfire on July 3 – Council Member Carmean
Second – Council Member Bunting

DISCUSSION

Mrs. McWilliams advised that the bonfire will be advertized twice this year in the Coastal Point. A new feature at the bonfire is a silent auction for bidding on lifeguard equipment starting at \$75. There will be a raffle and T-shirts and beach towels will be for sale. Council Member Smallwood supports the efforts of the Beach Committee; Council Member Carmean added that it is a good family event.

PUBLIC COMMENT

- Buzz Henifin (48 Windward Way) – questioned if the Beach Committee is allowed to auction off equipment purchased by the town. Chief Boyden noted that the equipment is “surplus” and that surplus equipment has been sold in the past on E-Bay.

Vote: All in favor 7-0

Motion to allow Laser Light Show passed.

Approval of Minutes:

Motion to Approve the Minutes of May 21, 2010 Meeting - Council Member Weistling

Second: Council Member Smallwood

DISCUSSION

Council Member Carmean noted a minor change: “Council Member Carmean seconded Mayor Serio’s suggestion that Town Manager Abbott contact the Town’s insurance carrier and the Town’s legal advisor for clarification.”

Vote: All in favor (7-0)

Minutes Approved

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Treasurer's Report:

Council Member Bunting noted that the financial report is included in the council meeting packet. In most cases the town is still under budget. The Town received a check (\$16, 495.28) from the State of Delaware to offset the Police Pension Fund. The Budget Committee continues to work on next year's budget and will meet again on June 30, 2010.

Motion to Accept the Treasurer's Report - Council Member Carmean

Second - Council Member Langan

DISCUSSION

Council Member Carmean questioned if the Town is receiving interest from its CDs. Council Member Bunting responded that the Town has received and continues to receive interest income. The final result of all recent activity should be showing next month.

Vote: All in favor (7-0)

Treasurer's Report accepted.

Town Manager Report:

- Town Manager reported that residents have expressed concern regarding the dune cross-over. Mr. Abbott has been in contact with DNREC who have promised to rectify the problems.
- DNREC Energy Office has reimbursed the Town \$2,712.00 (reimbursement in full) for its recent energy audit. The Town has applied for a formula grant of approximately \$20,000.00 for HVAC and other ancillary items. The Town will apply for approximately \$90,000.00 in competitive grants for solar energy installations to the Public Works building.
- A street rehabilitation study has been completed and estimates \$97,972.00 is required to maintain the Town's streets. Mr. Abbott encouraged citizens to contact their State representatives to urge passage of a bill to fully fund municipal streets and lighting.
- Secretary Nancy Avery has left her position with the Town; Mr. Abbott will conduct interviews on July 7, 2010 to fill the vacancy. The vacancy is advertized on the Town's web site and on the State and Del Tech job boards.

Department Reports:

- Beach Patrol –Pat Schuchman reported on behalf of Tim Ferry that the Beach Patrol report is included in the meeting packet.
 - Council Member Weistling expressed concern that additional lifeguard coverage is needed on the Lewes Street beach; Council Member Tingle noted that she received a phone call about this same concern.
 - Todd Smallwood advised that stands are pulled from certain underutilized areas to beaches in the south end to compensate for larger crowds. Becka McWilliams added that the beach between King and James has two (2) guards regardless of the number of persons using the beach.
 - Mayor Serio noted that it has been a long time since a guard was posted on every street; Council Member Smallwood added that recent budget cuts have cost five (5) guard positions. Council Member Carmean noted that Fenwick Island Beach Patrol follow the 2/1-2/1 rotational schedule that meets the lifeguard association standards for coverage.
- Building Official – Report is included in the council packet.
- Public Works: Report is included in the council packet.
 - Town Manager Abbott added that Charlie Smith will retire on July 29, 2010
- Fenwick Island Police Department: Report included in the council packet.
 - Chief Boyden also reported that his department will host a second Pedestrian and Bicycle Safety Checkpoint in cooperation with the University of Delaware and the Delaware Department of Highway Safety in July.
 - The Highway Department has supplied the town with Pedestrian stencils that the Public Works department will use to mark Bunting Avenue.
 - Grant funds have been secured for extra duty coverage over the July 4th holiday weekend. He urged residents to call 911 if they experience an emergency since the FIPD officer may not be able to answer the department cell phone.
 - The police department has a kayak that was found on Dagsboro Street. It is being stored at town hall.

DISCUSSION

Mary Pat Kyle (1205 Bunting Ave) – asked if the police will be patrolling the beach to prevent fire works; Chief Boyden responded in the affirmative.

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Council Member Smallwood asked if the FIPD is equipped to do car seat safety checks; Chief Boyden responded in the affirmative.

Council Member Carmean advised that the pedestrian light on Dagsboro Street is out of sequence; Chief Boyden responded that he has made DelDOT aware of the problem and they have agreed to look into it.

Committee Reports:

- Beach Committee –Becka McWilliams advised that she had nothing further to add
- Environmental Committee –Council Member Carmean reported that the committee is encouraging Buzz Henifin to work on a “water” chart to be on display in Town Hall. The committee is also working on the Adopt a Highway program. The Barefoot Gardeners of Fenwick Island have been awarded a “Stewards of the Environment” award; rain barrels are still available from the Town.

Planning Commission: Report included in Council book.

DISCUSSION

- Mayor Serio asked that the Planning Commission and the Parks and Recreation Advisory Group provide council with a copy of its open space plan with a time line for implementation.
- Council Member Weistling questioned “sympathetic design” principles as mentioned in the Planning Commission monthly report. Council Member Smallwood noted that the Commission had discussed an idea of sympathetic design as it relates to construction principles.

Charter & Ordinance:

- Proposed First Reading of Chapter 127 Sanitation – Council Member Weistling

Motion to accept – Council Member Weistling

Second - Council Member Langan

Council Member Weistling advised that the proposed change deletes the existing Chapter 127 and replaces it with the new Chapter 127 (included at the end of these minutes).

DISCUSSION

Council Member Weistling advised that definitions have been added to the chapter and that recycling is being addressed. Some sections have been reorganized; conviction and fine have been addressed.

Vote to accept the Proposed First Reading of Chapter 127 Sanitation - All in Favor (7-0)

Motion Passed

- Proposed Second Reading of Chapter 131 Sewers – Council Member Weistling

Motion to accept – Council Member Weistling

Second – Council Member Bunting

Council Member Weistling advised that the proposed change involves 131-1; 131-3 and 131-4 (included at the end of these minutes).

DISCUSSION

Council Member Weistling advised that the section is less wordy and also replaces the term “commissioner of public health and safety” with the term “town designee.”

Motion to accept Second Reading Chapter 131 Sewers: Smallwood – Aye; Carmean – Aye; Bunting – Aye; Serio – Aye; Weistling – Aye; Tingle – Ate; Langan – Aye.

Motion passed (7-0)

Old Business:

- None

New Business – No Action to be Taken:

- Council Member Weistling suggested that Chief Boyden look at the parking situation on Cannon Street where the new park will be. The current arrangement may cause traffic problems. Council Member Weistling would like input from citizens on plans for the park and he suggested that an item might be placed on the Town web site seeking input.

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Public Participation:

- Buzz Henifin (48 Windward Way) – thanked Sgt. Devlin for his prompt assistance over the Memorial Day weekend.
- Dick Bowman (7 W Dagsboro St) – regarding the Building Official report, Mr. Bowman asked about the legality of the rotating jet ski lift on the Dagsboro Street canal that was permitted. Building Official Schuchman noted that it is legal because it has the ability to pivot vs. a stationary lift. Mr. Bowman suggested Council consider doing away with the rules for boat lifts. Council Member Carmean recalled a study a couple years ago; change was voted down. Council Member Weistling noted that the subject will be addressed by Charter and Ordinance.
- Pete Frederick (1605 Bunting Ave) – asked about the status of the sidewalk plan for the town. He asked if it is possible to do one or two blocks. Mayor Serio advised that the Town hopes for a grant to do more than that; Council Member Bunting noted that RT 54 will have sidewalks installed. Council Member Weistling added that the Town Charter authorizes the Town to place sidewalks at the expense of the property owner.
- Mike Quinn (5 W Houston) – asked the name of the Town Solicitor now that Tempe Steen has retired. Mayor Serio advised that the Town is represented by Mary Schrider-Fox of the same firm. Mr. Quinn asked who will build the kayak ramp; Mayor Serio advised that the Town will consult with experts about construction.

Upcoming Events and Meetings:

Mayor Serio announced all meetings and events. She asked if FISH would still hold its meeting on 7/24/2010; Mary Pat Kyle advised that the meeting will be held. Pat Schuchman added the C&O meeting on July 6, 2010 at 9:30 AM.

Motion to Adjourn: Council Member Tingle

Second: Council Member Bunting

All in favor to adjourn (7-0)

Mayor Serio adjourned the meeting at 5:30 PM.

Respectfully submitted,

Agnes DiPietrantonio, Town Clerk
For Diane Tingle, Secretary

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TO: All Members of Town Council
Property Owners and Residents of the Town of Fenwick Island
Sussex County Board of Elections

FROM: Board of Election, Town of Fenwick Island
Edward Henifin, Richard Bowman, and Mary Wright

DATE: June 23, 2010

WHEREAS, the Board of Election has examined the Certificates of Eligibility submitted by the one (1) nominee, and do HEREBY declare, the following candidate eligible and qualified to serve:

R. Gardner Bunting

THEREFORE, this one (1) candidate is declared elected to fill one (1) vacancy; and

WHEREAS, there being no other nominees for the remaining two (2) Council positions presently eligible to be filled by election of qualified candidates: and

WHEREAS the two positions are currently filled by qualified candidates:

Diane Tingle
William Weistling, Jr

THEREFORE, the Board of Election declares that these two (2) council members shall remain as members of the Town of Fenwick Island Council until such time as his or her successor is elected and qualified in accordance with the Town Charter Section 6.

WHERE AS, Diane Tingle and William Weistling Jr. will serve as members of Council until one or both submit a letter of resignation, and their positions are filled by appointment by the remaining members of Council and shall serve for the unexpired term or until his or her successor shall be elected and duly qualified, in accordance with the Town Charter Section 15.

THEREFORE, the scheduled August 7, 2010, election is hereby cancelled.

Signed and dated June 23, 2010

Chairman

Inspector

Judge

Edward Henifin

Richard Bowman

Mary Wright

NOTARY:

Cc: Administration File

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NOTICE

On June 25, 2010 The Fenwick Island Town Council
Passed the Following Resolution #46-2010
**Resolution Adopting the 2010 Multi-Jurisdictional All Hazard Mitigation Plan
For the Town of Fenwick Island, Delaware**

Whereas, the Disaster Mitigation Act of 2000, as amended, requires that local government develop and adopt natural hazard mitigation plans in order to receive certain federal assistance; and

Whereas, a local Hazard Mitigation Advisory Committee comprised of County governmental departments, Municipal council members, the business community, nonprofit organizations, and citizens working in Sussex County of the State of Delaware, convened in order to study the Town of Fenwick Island's risks from and vulnerabilities to, natural, technological and terrorist threats and hazards and to make recommendations on mitigating the effects of such hazards on the town; and

Whereas, a contract was issued to an experienced consulting firm to work with the Sussex County Hazard Mitigation Advisory Committee and the Delaware Emergency Management Agency to develop a comprehensive all hazard mitigation plan for Sussex County of the State of Delaware; and

Whereas, the efforts of The Town of Fenwick Island, Sussex County, and the consulting firm have resulted in the development of an All Hazard Mitigation Plan for the County and the Town of Fenwick Island.

Therefore, the Town Council, of the Town of Fenwick Island, on behalf of the citizens and property owners of The Town of Fenwick Island, resolves that the All Hazard Mitigation Plan dated March 2010 is hereby approved and adopted for The Town of Fenwick Island and Sussex County of The State of Delaware.

Attest: _____
Agnes D. DiPietrantonio, Town Clerk

Audrey Serio, President of Council

Diane B. Tingle, Council Secretary

R. Gardner Bunting, Council Treasurer

Gene Langan, Council

William Weistling Jr., Council

Vicki L. Carmean, Council

Todd Smallwood, Council

I, Diane B. Tingle, Secretary of the Town Council, of the Town of Fenwick Island, Delaware, do hereby certify that the foregoing is a true and correct copy of the Resolution passed by the President and Council at a meeting on June 25, 2010, at which a quorum was present and voting throughout and the same is still in force and effect.

Date

Diane B. Tingle, Council Secretary

45/adip Adoption of All Hazard Mitigation Plan
PASSED June 25, 2010

Resolution #46-2010

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TO: TOWN OF FENWICK ISLAND COUNCIL MEMBERS

FROM: FENWICK ISLAND ENVIRONMENTAL COMMITTEE

DATE: June 25, 2010

RE: PROPOSED DELAWARE FORESTRY DEPARTMENT TREE GRANT

*Presented for the
record by
Council Member Carson
06/25/2010
Regular Council Mtg*

BACKGROUND: On April 30th, 2010, the Environmental Committee finalized a three year grant, designated as the Tree Triage Program, which had been awarded to the Town by the State of Delaware Forest Service. This project has been one of the reasons why the Town has received the Tree City USA recognition for the past several years. In return, the Tree City USA award makes it possible for the Town to apply for other available grants.

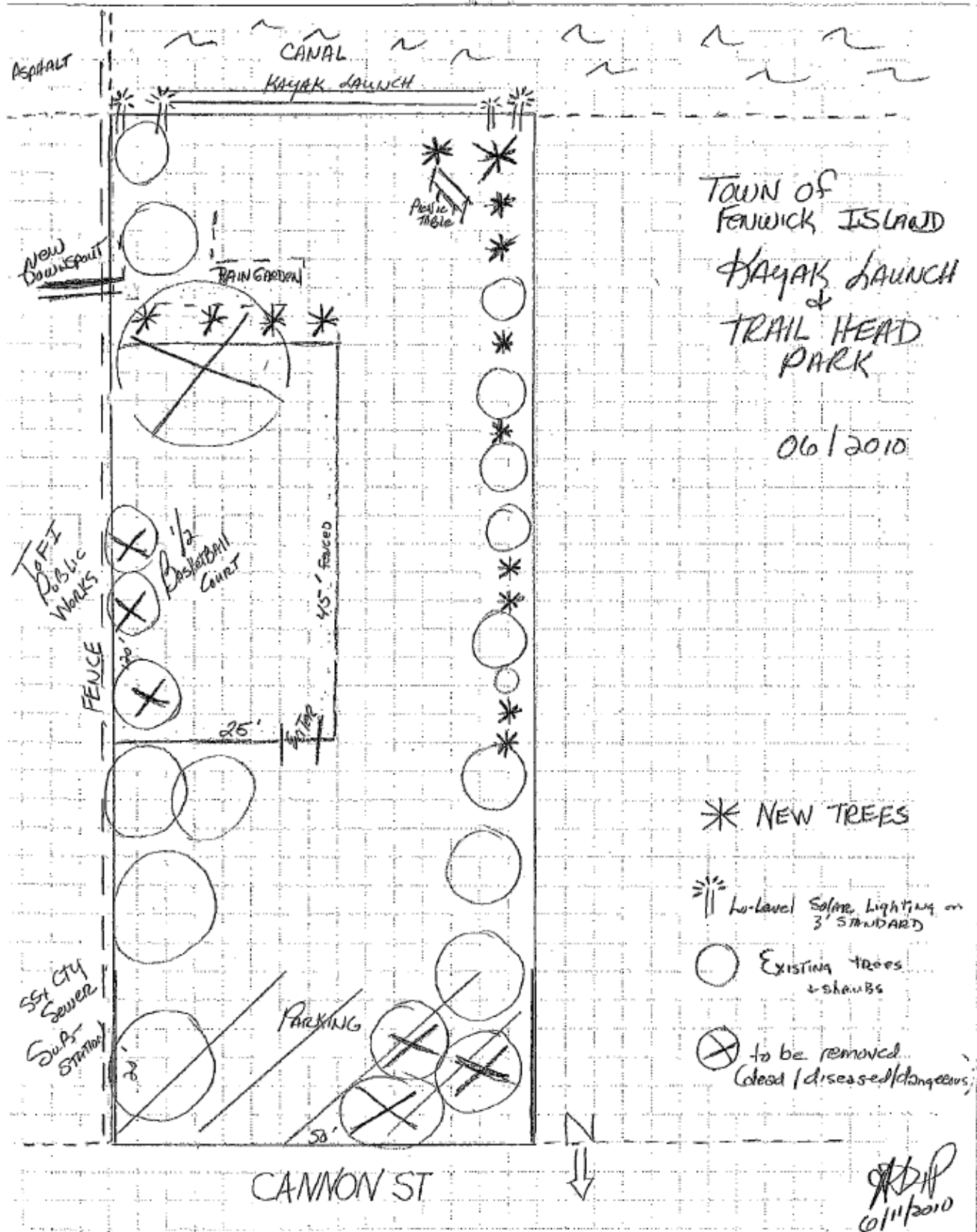
At the end of May, the Town was notified about the availability of another grant from the Forestry Department. This time, the grant rules note the following: *Eligible projects must be performed on public lands within the community... Urban and Community Forestry grants are not intended to provide ongoing funding.* As such, a new grant program must be developed.

At its June 8th meeting, the Environmental Committee voted to apply for this new grant in order to provide trees around the periphery of the new Kayak Launch and Trailhead Park on Cannon Street, but only if the Town Council approves.

THE 2010 TREE PLANTING GRANT APPLICATION: The deadline is July 15th, which doesn't leave much time to develop the project narrative, volunteer/partnership information, and educational components as well as the proposed cost. While the application is only a proposal, there will still be time later to develop more specific details. Therefore, the Environmental Committee is asking approval from the Fenwick Island Town Council to move forward with a grant request of no more than \$5,000.00. If the Town is awarded this grant, it will be required to "front fund" this amount of money, but once the trees are purchased and put into place, the Delaware Forest Service will refund this amount. The proposed \$5,000 grant will cover the cost of trees and/or labor, supplies, and equipment rentals. The Town's portion of the grant is computed from volunteer and staff labor, of which no more than one quarter can be in administrative and planning activities. Please note that there is no guarantee that the Town will actually receive this grant.

Other Concerns: The Environmental Committee felt strongly that Council should takes steps to develop another committee to handle long term planning for this area, such as zoning issues and other park features. With this in mind, the Environmental Committee would like to recommend to this other (unnamed) committee the inclusion of a picnic area, rain garden and oyster floats.

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PROPOSED: (Delete EXISTING Chapter 127)

Chapter 127, SANITATION

ARTICLE I

Fees for Collection of Solid Waste

§ 127-1. Definitions.

DWELLING, SINGLE-FAMILY -- A building constructed for occupancy as a single-family residence.

PERSON -- Includes firms, companies, corporations, partnerships, associations or any organization entity as well as individuals.

SUITABLE PROTECTION -- a means or device to enclose trash containers which will also prevent the containers, lids and their contents from being blown about by the wind. Suitable protection shall be constructed to permit easy access to the enclosed trash containers for trash removal by the collector and shall be no higher than 30 inches above the surrounding ground level where top access only is provided. If higher than 30 inches, an appropriate side or back shall be open or readily opened to permit access to each container and such container shall be readily accessible from the street.

TOWN COUNCIL DESIGNEE -- member of the Fenwick Island Police Department or Town of Fenwick Island employee.

TRASH -- Includes garbage, rubbish, yard waste, construction debris, recyclables and/or any other foreign waste.

§ 127-2. Annual service fee.

Property owners of single-family dwellings in the Residential Zone and property owners of single-family dwellings in the Commercial Zone in the Town of Fenwick Island, Delaware, shall be assessed an annual service fee for the collection of garbage, **recyclables, yard waste** and trash by the Town of Fenwick Island. Owners of properties in the Commercial Zone used for purposes other than single-family dwellings shall engage the services of private garbage, **recyclables, yard waste** and trash removal companies for the removal of such items in accordance with the rules and regulations set forth below in Article II, Handling and Disposition of Solid Waste.

§ 127-3. Determination of fee.

The annual service fee for single-family dwellings shall be determined by Town Council as a budget item annually.

§ 127-4. Rendering and payment of fee.

For property owners of single-family dwellings, the notice, rendering and payment of the annual service fees for the collection of garbage, **recyclables, yard waste** and trash shall be in the same manner as is prescribed for the

notice, rendering the payment of the Town property tax, pursuant to Section 24 of the Town Charter. The proration of the annual fee, if any, shall be determined in accordance with the procedures for the proration of taxes on new buildings as set forth in Chapter 146, Taxation, Article I, Reassessment.

§ 127-5. Delinquent fees.

For property owners of single-family dwellings, the procedure for the collection of any delinquent annual service fee for the collection of garbage, **recyclables, yard waste** and trash shall be the same as prescribed for the collection of a delinquent property tax, pursuant to the provisions of the Town Charter.

ARTICLE II

Handling and Disposition of Solid Waste

§ 127-6. Garbage on public or private property prohibited.

It shall be unlawful for any person to place trash, yard waste, construction debris or any other foreign waste on any public or private property within the Town of Fenwick Island except as provided in §61-15A and §127-7 hereof.

§ 127-7. Regulations for handling and disposition of **trash**.

A. Concerning the handling and disposition **of trash in the Residential Zone, the following rules and regulations shall apply:**

1. The owner or occupier of any given property shall place all trash into containers and place the containers along the curb in front of such property in order that the trash may be conveniently removed by the collector thereof.
2. All bramble, sticks, tree trimmings and the like shall be securely tied together in bundles, each of which shall not exceed 50 pounds in weight or four feet in length.
3. All trash shall be placed in covered plastic or metal containers, not to exceed 32 gallons in size or 50 pounds in weight when filled, and shall be watertight to prevent leakage and covered to exclude water.
4. Unless suitable protection is provided by a container bin, all containers shall be placed along the front property line no earlier than 12:00 noon the day prior to collection and removed no later than 8:00p.m. on the day trash has been collected.
5. No person shall dispose of any **garbage, recyclables, yard waste, trash or litter** of any kind by throwing or placing it upon any property within the confines of the Town or within a distance of one mile of the Town limits.
6. No person shall put or place any **garbage, recyclables, yard waste and trash** collected or gathered from one property upon or in front of any other property or within the Town without the express consent and permission of the owner of such other property to do so.

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7. All public waste containers placed by the Town of Fenwick Island shall be used by the general public for the disposal of trash accumulated while using the public areas of the Town. These containers shall not be used for disposal of residential and/or commercial trash.

B. Concerning the handling and disposition of trash in the Commercial Zone, the following rules and regulations shall apply:

1. Any business which continuously uses more than five containers of trash, rubbish or garbage shall be required to place its garbage, recyclables, yard waste and trash in a one- or two-ton dumpster provided by the owner. All dumpsters shall have tight-fitting lids which shall be kept closed except when filling or emptying and shall be watertight to prevent leakage. All dumpsters shall be situated on a paved area at least of equal size as the dumpster and shall not be less than 10 feet from any neighboring or adjacent property line.

2. All businesses should have trash removed as often as necessary to comply with Subsection B3(a) and B3(b) of this section.

3. The following maintenance requirements must be met:

(a) The owner and/or tenant of any property shall maintain trash containers of all kinds in a well repaired, clean, odorless condition so that these containers shall not in any way be offensive or injurious to the health of the residents of the Town of Fenwick Island. The owner and/or tenant of any property shall maintain the area where trash containers and dumpsters are placed in a clean, odorless and sanitary condition so that this area shall not be offensive by odor or injurious to the health of the residents of the Town of Fenwick Island or kept in an unsightly condition or in a condition which is detrimental to the adjacent properties and the general neighborhood.

(b) A Town Council designee shall have discretion in determining when there exists an unsanitary condition of either the containers or the area where the containers are placed so that the containers and container area are not injurious to the health of the residents of the Town of Fenwick Island, cause an unsightly condition or become detrimental to the adjacent properties and the general neighborhood.

(c) After making such a determination, a Town Council designee shall give written notice of the violation to the owner and/or tenant of the property on which the condition exists. The notice shall set a time limit for correction, removal or abatement of the condition, which period shall not exceed five days. Said notice may be served by the Police Department or a Town employee, or it may be served by registered or certified mail.

(d) The owner and/or tenant of the property shall be guilty of failing to correct, remove or abate an unsanitary condition that may be injurious to health, unsightly or detrimental to the adjacent properties or general neighborhood if the condition continues to exist on or after the removal or abatement date that is set on the written notice.

§ 127-8. Violations and penalties

Any person violating any provision of this Article shall, upon conviction thereof, be subject to a fine of \$200. It shall be determined that each day that an unsanitary or injurious to health condition or a condition which is unsightly or detrimental to the adjacent properties or general neighborhood exists after the date set for correction of the condition shall constitute a separate offense.

ARTICLE III

General Provisions

§ 127-9. Unsanitary conditions prohibited.

A. It shall be unlawful to pump, drain, pour or throw in or on the streets, alleys, ditches, underdrains, water, lagoons, bay or private property within the Town of Fenwick Island, Delaware, any sewage, slops, filth, unclean water or other liquids that are unsanitary or injurious to the health of the residents of said Town. All water removed from a pool, hot tub or spa shall be deposited in a sanitary sewer system.

B. After proper notice is provided, it shall be unlawful to fail to correct or eliminate any unsanitary or health condition deemed injurious to the residents of the Town of Fenwick Island.

§ 127-10. Determination of unsanitary condition and notice of violation.

A. The Town Council designee shall have discretion in determining where there exists a condition that may be unsanitary, or in any way injurious to the health of the residents of the Town of Fenwick Island

B. After making such a determination, the Town Council designee shall give written notice of the violation to the owner, occupier of the structure home, building, vehicle or other object or another person appearing to be causing such condition. The notice shall set a time limit for the correction, removal or abatement of the condition, which period shall not exceed 15 days.

C. Said notice may be served by Police Department or a Town employee, or it may be served by way of registered or certified mail.

§ 127-11. Violations and penalties.

A. A person shall be guilty of failing to correct, remove or abate any violation of this ordinance if such violation continues to exist on or after the date set for removal in the given notice. The notice given under this Article shall expire one year from the date set for correction, removal or abatement.

B. Upon conviction for failure to correct, remove or abate an unsanitary or injurious to health condition, the guilty party shall be fined \$200 for each offense. It shall be determined that each day that the condition exists after the date set for correction, removal or abatement shall constitute a separate offense, thereby permitting the imposition of a fine for each day of the continuing offense.

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Chapter 131, SEWERS

EXISTING:

§ 131-1. Permission to construct and maintain sewage system.

Sussex County is hereby granted permission to construct, maintain, operate, repair and replace water distribution and sanitary sewage collection lines, force mains, lift station, pump stations, manholes and other appurtenances within the rights-of-way of all roads within the town limits which are dedicated to public use in accordance with the requirements of Title 9, Chapter 67, Paragraph 6703 of the Delaware Code, provided that all roads of Fenwick Island that are damaged or removed in the course of water and sewer facility installation and repair shall be replaced in accordance with the Delaware Division of Highways standards for secondary roads and paving damaged or removed from roads maintained by the Delaware Division of Highways shall be replaced in accordance with the Delaware Division of Highways' requirements. The cost thereof shall be made by and at the sole expense of Sussex County.

§ 131-3. Determination and notice of violation.

A. The Town Commissioner of Health and Sanitation, a designee he appoints or a designee of the Town Council shall have discretion in determining when there exists a condition such as set forth in § 131-2 above which is or threatens in any way to be dangerous to the safety or health of the people of Fenwick Island.

B. After making such a determination the Town Commissioner of Health and Sanitation, a designee he appoints or designee of the Town Council shall give written notice of the violation to the owner and/or occupant of the property on which the condition exists. The notice shall set a time limit for correction, removal or abatement of the condition, which period shall not exceed fifteen (15) days. Said notice may be served by the Commissioner of Health and Sanitation, any member of the Town Council, Police Department or town employee, or it may be served by mailing by registered or certified mail with return receipt.

§ 131-4. Violations and penalties.

B. Any person found guilty of failing to correct, remove or abate a dangerous to safety or health condition shall be fined not less than twenty-five dollars (\$25.) nor more than fifty dollars (\$50.) for each offense; and it shall be determined that each day that the condition exists after the date set for correction, removal or abatement shall constitute a separate offense, thereby permitting the imposition of a fine for each day of a continuing offense.

C. If a condition such as set forth in § 131-2 is determined by the Town Commissioner of Health and Sanitation, a designee he appoints or a designee of the Town Council to be an emergency and the owner and or occupant is not available for receipt of notification such as set forth in § 131-3 or if the owner fails to comply with the notification as set forth in § 131-3 within the prescribed time, the town shall have full power and authority to enter into or upon the property in question with such personnel, implements, equipment and vehicles as may be necessary and proper to correct, remove or abate such a condition dangerous to safety or health. Any expense incurred by the town in performing such work, labor and proceedings shall constitute a lien on the property with interest at the lawful rate and shall be collected in the same manner as provided for the collection of delinquent taxes. The payment for such expense shall be in addition to any penalties that may be imposed by Subsection B of this section.

PROPOSED:

§ 131-1. Permission to construct and maintain sewage system.

Remove "water distribution and".

§ 131-3. Determination and notice of violation.

(Replace subsections "A" and "B" as follows:)

A. *The Town Council shall appoint a designee who shall have discretion in determining when there exists a condition such as set forth in § 131-2.*

B. *After such determination has been given, the Town Manager shall give written notice of the violation to the owner and/or occupant of the property on which the condition exists. The notice shall set a time for correction, removal or abatement of the condition, which period shall not exceed fifteen (15) days.*

§ 131-4. Violations and penalties.

B. Upon conviction, such person found guilty of failing to correct, remove or abate a dangerous to safety or health condition shall be fined \$200 for each offense. It shall be determined that each day that the condition exists after the date set for correction, removal or abatement shall constitute a separate offense, thereby permitting the imposition of a fine for each day of a continuing offense.

(Replace subsection "C" as follows:)

C. If such condition as set forth in § 131-2 is determined by the Town of Fenwick Island to be an emergency and the owner and/or occupant is not available for receipt of notification such as set forth in § 131-3 or if the owner fails to comply with the notification as set forth in § 131-3 within the prescribed time, the Town of Fenwick Island shall have the power to enter the property and correct the problem. The payment for such expense shall be in addition to any penalties that may be imposed by Subsection B of this section.